



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

2006 JUN -1 PM 2:56

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2006-0005

IN THE MATTER OF:

SEARS, ROEBUCK and COMPANY

RESPONDENT

)
)
)
)
)
)

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Compliance Agreement including payment of penalties, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

06.01.06

DATE

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2006 JUN -1 PM 2:56

FILED
EPA REGION VIII
CLERK

IN THE MATTER OF:

Sears, Roebuck and Company

Respondent.

) **COMPLIANCE AGREEMENT AND**
) **FINAL ORDER**
)
)
)
)
)

Docket No. **CAA-08-2006-0005**

I. STATUTORY AUTHORITY

1. This Compliance Agreement and Final Order ("CAFO") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, as amended on November 15, 1990, for violations of the "Stratospheric Ozone Protection" requirements of Section 608 of the CAA, 42 U.S.C. § 7671g, and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82.

2. This CAFO is issued pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (b)(3), which pertain to the quick resolution and settlement of matters before the filing of a complaint.

3. Consistent with section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), a copy of this CAFO will be sent to the Colorado Department of Public Health and Environment.

II. FINDINGS

A. Respondent

4. Respondent is Sears, Roebuck and Company.
5. At all times relevant to this action, Respondent was a corporation organized under the laws of the State of New York.
6. At all times relevant to this action, Respondent's business included the repairing and/or servicing of household appliances at one or more facilities, including at the facility that is the subject of this action, District 8181, which is located at 930 East 104th Avenue, Thornton, Colorado, 80233. Respondent received payment for the repairs and services it performed.
7. At all times relevant to this action, Respondent was a "person" within the meaning of section 302(e) of the CAA, 42 U.S.C. § 7602(e).
8. Charles Wolfskill (hereinafter referred to as the "Employee") was employed by Respondent during all or a portion of the time period from February 17, 2004, to May 13, 2005.

B. Citizen Tip

9. On May 7, 2005, Mr. Kris Casper of 1153 Cheyenne Place, Parker, Colorado, 80138, had his home refrigerator repaired by the Employee.
10. During the May 7, 2005 repair, Mr. Casper witnessed the Employee puncture the tube coming from the compressor of the refrigerator thereby allowing the HFC-134a refrigerant contained therein to vent to the atmosphere.

C. EPA Inspection

11. On August 31, 2005, EPA Inspector Cindy Beeler conducted an inspection of District 8181 service facility from which the Employee was dispatched.

12. During the August 31, 2005 inspection, Mr. Frank Mufic, General Manager of the District 8181 facility, told Ms. Beeler that he had asked the Employee about the venting, that the Employee admitted he had vented the refrigerant, and the Employee was then terminated by the Respondent.

D. Servicing of Appliances - Generally

13. Title VI of the CAA sets out requirements and prohibitions related to Stratospheric Ozone Protection. Section 608 of the CAA, 42 U.S.C. § 7671g, is contained within Title VI and sets forth requirements and prohibitions regarding the use and disposal of class I, class II and their alternative substances during the service, repair, or disposal of appliances and industrial process refrigeration. Section 608 is supported by regulations promulgated pursuant to the authorities set forth in that section.

E. Maintaining, Servicing, or Repairing Appliances

14. Under section 608(c)(1) of the CAA, 42 U.S.C. § 7671g(c)(1), it is unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance, to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in such appliance in a manner which permits such substance to enter the environment.

15. Under section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), effective November 15, 1995, paragraph § 7671g(c)(1) also applies to the venting, release, or disposal of

any substitute substance for a class I or class II substance. 40 C.F.R. § 82.154(a)(1), in pertinent part, similarly provides: "No person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances"

16. Under 40 C.F.R. § 82.152, "substitute" means "any chemical or product, whether existing or new, that is used by any person as an EPA approved replacement for a class I or class II ozone-depleting substance in a given refrigeration or air-conditioning end-use."

17. The regulations, at 40 C.F.R. Part 82, subpart A, Appendix A, list CFC-12 as a Class I controlled substance. The Final Rule, 40 C.F.R. Parts 9 and 82, 59 Federal Register 13044, (March 18, 1994), states that HFC-134a is acceptable as a substitute for CFC-12 in retrofitted and new household refrigerators.

18. In repairing and/or servicing the household refrigerator referenced in Paragraph 9 of this Complaint, the Employee knowingly vented the substitute refrigerant contained within as directly prohibited by 40 C.F.R. §§ 82.154(a)(1).

19. Respondent, in the course of performing the maintenance, service, and/or repairs set forth in Paragraphs 9-10 of this Complaint on an appliance which contained and used as a refrigerant HFC-134a, a substitute substance for a class I substance, knowingly vented or otherwise knowingly released or disposed of HFC-134a in violation of section 608(c)(1) and (2) of the CAA, 42 U.S.C. § 7671g(c)(1) and (2). Respondent's violations are subject to the assessment of penalties pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d).

20. This proposed settlement is not to be taken as an admission for the purposes of any proceeding other than the one arising under the Clean Air Act.

III. ORDER

21. Based upon the foregoing FINDINGS, and pursuant to the authority vested in the Administrator of the EPA by section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

22. Respondent shall comply immediately with all the requirements of section 608 of the Act, 42 U.S.C. §§ 7671g, and 40 C.F.R. Part 82.

IV. PENALTY

23. Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), Respondent has agreed to pay \$10,000 in full satisfaction of the alleged violation. Payment of the penalty shall: (1) be made by certified or cashier's check payable to "Treasurer, United States of America;" (2) identify the case title and docket number of this action (either on the check or in a transmittal letter accompanying the check); and (3) be remitted to:

Mellon Bank
P.O. Box 360859
Pittsburgh, Pennsylvania 15251-6859

A copy of the check shall be sent to:

Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and to:

David Rochlin, Enforcement Attorney (8ENF-L)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

24. Payment of the penalty in accordance with the procedures set forth in Paragraph 22 of this CAFO shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing in this matter.

25. Respondent shall pay the penalty within thirty (30) days after it receives the signed, final copy of this CAFO.

26. Respondent agrees not to claim a federal income tax deduction for all or any part of the penalty it is paying to the United States.

27. Neither the assessment nor the payment of an administrative penalty pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), shall affect Respondent's continuing obligation to comply with the CAA or any other federal, state, or local laws or regulations and any compliance order issued under the CAA.

28. Each party to this proceeding shall bear its own costs and attorney fees.

29. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

VI. EFFECTIVE DATE

30. This CAFO shall become effective upon issuance by the Regional Judicial Officer.

IN THE MATTER OF:

**Sears, Roebuck and Company
Respondent.**

Date: 4/28/2006

A handwritten signature in cursive script, appearing to read "Carol Rushin", is written over a horizontal line.

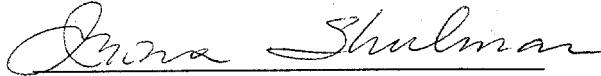
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

IN THE MATTER OF:

**Sears, Roebuck and Company
Respondent.**

Date: _____

5/9/06



Irina Shulman

Compliance and ISO Director

Sears Home Services

3333 Beverly Road

Hoffman Estates, IL 60192-3322

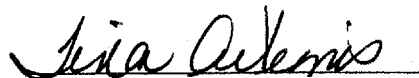
CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLIANCE AGREEMENT AND FINAL ORDER** in the matter of **SEARS, ROEBUCK and COMPANY; DOCKET NO.: CAA-08-2006-0005** was filed with the Regional Hearing Clerk was filed on June 1, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to David Rochlin, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on June 1, 2006, to:

Mr. Richard Casey
Sears, Roebuck and Company
333 Beverly Road
(#B6-347A, Dept. 766X)
Hoffman Estates, IL 60179

June 1, 2006


Tina Artemis
Regional Hearing Clerk



Printed on Recycled Paper